THE UNITED STATES AND THE LEAGUE OF NATIONS

by

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INTRODUCTION

AMERICAN foreign policy with respect to the League of Nations and the principles of international organization embodied in the League has been so unsensational in its development during the past ten years as almost to escape notice. A survey of these ten years, however, tends to emphasize the significance of the change which has come about.

Today, as the following report shows, the United States is participating in one capacity or another in practically all of the important international conferences held under the auspices of the League, except the meetings of the Council and the Assembly. It is participating to a large extent in the work of the technical organizations, and in the non-political advisory committees set up in Geneva. Likewise, the United States has developed a system for the peaceful settlement of international disputes which parallels, in certain respects, the policy pursued by members of the League. Thus, as will be seen, the American government has to a certain extent accepted the principle of compulsory arbitration of legal disputes and the principle of compulsory investigation of other differences. By signing the Kellogg anti-war pact, it has promised to use peaceful means for settlement of all disputes. The United States has not, of course, accepted as extensive obligations as members of the League. It has adopted a narrower definition of compulsory arbitration, it has not yet joined the World Court, nor has it accepted, or defined a policy with respect to, the League system of sanctions. The nature of these developments is set forth briefly in the following pages.

It is seldom that the foreign policy of a country shows such marked changes as did the foreign policy of the United States between the years 1917 and 1921. With the entrance of the United States into the World War, this country suddenly began to play a dominant part in shaping the destinies of the world. Not only did American funds and American men contribute to the Allied victory, but the American peace delegation, headed by President Wilson, to a certain extent dominated the peace conference at Paris and dictated important passages in the peace treaties—particularly those relating to the establishment of the League of Nations. The Treaty of Versailles was signed on June 28, 1919. On July 10, President Wilson sent it to the Senate. Following hearings[1] and a prolonged debate, the treaty, carrying the Lodge reservations, was decisively defeated on November 19. A new session of Congress opened the following month, and on February 9, 1920 the question of approving the Treaty of Versailles was revived. On March 19 the treaty, subject to 15 reservations and understandings, again failed to obtain the required two-thirds majority—this time by a margin of 7 votes.[2] Among those voting against ratification were a number of senators who favored the League but opposed the treaty because of its reservations; had four or five of these voted the other way, and had the reservations been acceptable to the other powers, the United States would have entered the League.[3]

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1. Cf. "Treaty of Peace with Germany," *Hearings*, Committee on Foreign Relations, Senate Document 106, 66th Congress, 1st Session.

2. Cf. the resolution of March 19, 1920, 52 *Congressional Record*, p. 5, 4599; H. W. V. Temperley, "A History of the Peace Conference of Paris," Vol. VI, Chapter V.

3. At a luncheon meeting of the Foreign Policy Association in New York, Mrs. Douglas Robinson, a sister of former President Roosevelt, declared that Senator Lodge was in favor of League membership with reservations. (Cf. *In the League and Out*, Foreign Policy Association, Pamphlet No. 63, February 1930, p. 30.) This was denied by Ambassador Morgenthau and by Senator Lodge's daughter, Mrs. Constance Williams. In a letter to Ambassador Morgenthau the latter wrote: "My father hated and feared the Wilson League, and his heart was really with the irreconcilables, and the object of his Reservations was so to emasculate the Wilson pact, that if it *did* pass, it would be valueless." For the text of this letter, quoted in an address by Ambassador Morgenthau, cf. *The Consensus* (organ of the National Economic League), Vol. XIV, No. 4, p. 30. Substantially the same conclusion is reached in a study by H. Maurice Darling, "Who Kept the United States out of the League of Nations?" *Canadian Historical Review*, September 1929.

Since the rejection of the Versailles Treaty it has been customary to assert that the United States has moved in a diametrically opposite direction from that pursued during the years 1917-1921—that the United States now follows a policy of "isolation." While for a time this assertion may have been true, there is increasing evidence to show that the United States has gradually assumed an active part in international affairs and in international cooperation. The degree to which this cooperation has increased may be determined by an examination of the extent to which the United States has accepted the three great principles which underlie the League of Nations and which have been the bases of most proposals for international organization. These principles are:

1. The development of international legislation and administration through the conference system.
2. The pacific settlement of disputes.
3. The imposition of sanctions against an aggressor State.[4]

AMERICAN COOPERATION WITH THE LEAGUE CONFERENCE SYSTEM

The changing attitude of the American government toward the League of Nations may be shown by comparing the policies of 1921 with those of succeeding years. During the campaign of 1920, Mr. Harding promised that if elected he would immediately summon the "best minds in America, representing an all-American opinion, to consult and advise as to America's relationship to the present association of nations, to modifications of it or substitutes for it."[5] On taking office in March 1921, however, President Harding found it difficult to take such action. In his first message to Congress he declared that "in the existing League of Nations with its super-powers, this Republic will have no part." During the first six months of the Harding administration, the State Department failed to answer communications from the Secretary-General of the League dealing with requests for information, invitations to conferences and other matters.[6]

One instance of this failure to acknowledge League communications was the invitation sent in October 1921 by the League Secretariat to the American members of the Permanent Court of Arbitration to submit nominations of candidates for the Permanent Court of International Justice. As a matter of courtesy, this invitation was sent in care of the State Department. The State Department, however, did not forward the invitation to the four American members.[7]

Following protests that this attitude was discourteous, the State Department in the fall of 1921 acknowledged numerous League communications, usually couched in the same form: "The Secretary of State has taken note of this information for any purposes of relevancy to the United States as a state not a member of the League of Nations."

A second and more fundamental change began in 1923, when the State Department appointed observers to various League committees and conferences dealing with international legislation and other matters. Such observers, acting in a "consultative capacity," represented the United States at the Opium Advisory Committee, the Conference on Obscene Publications, the Second Conference on Transit and Communications, and the Conference on Customs Formalities—all of which were held in 1923.[8]

A third change developed during the following year, when the United States adopted the practice of sending official delegations to League conferences concerning humanitarian, economic and other "non-political" matters. Apparently the first such delegation was sent in the fall of 1924 to the Second Opium Conference.[9]

4. It is significant that practically all of the proposals for a League of Nations placed before the Paris peace conference contained a provision for some kind of sanction. (Shücking and Wehberg, *Die Satzung des Völkerbundes*, 2nd ed., p. 602.) Even so ardent an opponent of military sanctions as Mr. S. O. Levinson (a leader in the outlawry of war movement in the United States) believes that some form of sanctions against a State violating its obligations is necessary. (Cf. his article, "The Sanctions of Peace," *Christian Century*, December 25, 1929; for Senator Borah's attitude, cf. p. 182). It may be argued that the pressure exercised by disinterested powers through mediation, as in the Bolivia-Paraguay dispute, is a form of non-military sanction. Cf. p. 179.

5. J. W. Garner, *American Foreign Policies*, p. 192.

6. Cf. Raymond B. Fosdick, "The State Department and the League of Nations," *American Review of Reviews*, April 1924 (reprint).

7. On learning of the invitation the members expressed a wish to make nominations, but were advised against such action by the administration. (Cf. Garner, cited, p. 197.) At present the American group makes nominations as a matter of course.

8. "American Cooperation with the League of Nations," *Congressional Record*, June 10, 1929, extension of remarks of Hon. Cordell Hull. Cf. *American Cooperation with other Nations through the League of Nations, 1919-1926*, World Peace Foundation.

9. This was done under the authorization of a joint resolution of Congress. (R. L. Buell, *The International Opium Conferences*, World Peace Foundation, Vol. VIII, 1925, p. 101.)

U. S. PARTICIPATION IN NON-POLITICAL CONFERENCES

Since 1924 official delegations from the United States have participated in the International Conference on Traffic in Arms (1925),[10] the Third Conference on Transit and Communication (1926), the three conferences on Abolition of Import and Export Prohibitions and Restrictions (1927-1929), the Conference of Experts on Double Taxation and Fiscal Evasion (1928), the Conference on Economic Statistics (1929), the Conference on the Counterfeiting of Currency (1929), and the Hague Conference on the Codification of International Law (1930). The United States government also appointed a delegation to the International Economic Conference of 1927. The delegates to this conference, while appointed by governments, were not instructed by them; in other words, they acted with the independence of experts. On the other hand, the United States was represented only by a "technical expert to cooperate in a consultative capacity," in the Conference on the Treatment of Foreigners (Paris, November 1929), and by a representative to participate "in an expert and advisory capacity" in the Conference for the Unification of Legislation on Bills of Exchange (May 1930).[11]

The only recent League conference in which the United States declined to participate, even in a consultative capacity, was the Tariff Conference which met in Geneva in February 1930. In a communication to the Secretary-General, the State Department declared that it viewed with approbation "any endeavor to facilitate world-wide economic relations and to remove discriminatory economic measures . . ." It could not, however, "at this time usefully participate in the conference" — doubtless because the United States Congress was then debating an increase in the American tariff. It should be pointed out that a number of League members also declined to participate in the Tariff Conference. While the United States did not have even an unofficial representative at the conference, Mr. Edwin C. Wilson, first secretary of the Paris Embassy, was instructed to be present and "to associate himself with the American Consulate at Geneva with a view to obtaining information regarding the development of the conference."[12]

According to former Secretary of State Kellogg, the United States government has sent official delegates to about 22 League conferences, while it has sent unofficial delegates in an advisory capacity to about 20 other League conferences all told.[13]

RECENT DEFINITIONS OF AMERICAN POLICY

The present attitude of the United States government toward the League was defined in 1928 by Secretary Frank B. Kellogg as follows:

> "The Government of the United States has continued its policy of friendly and helpful cooperation with the League of Nations on subjects of international humanitarian concern. . . . The correspondence with the League is carried on by the American Legation at Berne. Information on the activities of the League in which this Government is not directly represented is obtained through the Consulate in Geneva. The willingness of the United States to cooperate freely, fully, and helpfully with the League in matters of genuine international concern and our Government's determination to adhere to the policy of non-participation in the League itself is now well understood at Geneva."[14]

The 1928 Republican platform declared:

> "This Government has definitely refused membership in the League of Nations and to assume any obligations under the covenant of the League. On this we stand.
>
> "In accordance, however, with the long-established American practice of giving aid and assistance to other peoples, we have most usefully assisted by cooperation in the humanitarian and technical work undertaken by the League, without involving ourselves in European politics by accepting membership."[15]

Thus, according to the 1928 Republican platform, this country "most usefully" assists "in the humanitarian and technical

10. This conference was called to remove the objections made by the United States to the arms traffic convention signed at St. Germain in 1919. (Cf. "The United States and the St. Germain Treaties," F. P. A. *Information Service*, Vol. IV, No. 22, p. 429.)

11. State Department, *Press Releases*, October 12, 1929, p. 26; April 26, 1930, p. 196.

12. *Ibid.*, February 15, 1930, p. 71.

13. *New York Times*, March 29, 1930. These figures may include sessions of committees such as the Preparatory Commission for the Disarmament Conference.

14. Hon. Frank B. Kellogg, *Foreign Relations*, Republican National Committee, Bulletin No. 5, 1928, p. 13.

15. In his acceptance speech of August 11, 1928, Mr. Herbert Hoover declared: "Our country has refused membership in the League of Nations, but we are glad to cooperate with the League in its endeavors to further scientific, economic and social welfare and to secure limitation of armament." (*Republican Campaign Text Book*, 1928, p. 33.)

work of the League," not so much for the purpose of benefiting ourselves, but of "giving aid and assistance to other peoples."

In determining the extent to which the United States cooperates in the humanitarian and technical work of the League, it is necessary to recall the structure of League organization. The two main organs of the League are the Assembly, which meets annually, and the Council, which now meets three times a year. In addition there are:

(1) Three technical organizations dealing respectively with communications and transit, health, and economic and financial questions.

(2) A number of permanent commissions, the most important of which are those dealing respectively with military affairs, mandates, opium, protection of women and children and intellectual cooperation.

(3) Three temporary advisory commissions, dealing respectively with codification of international law, international relief and disarmament.

NON-POLITICAL ACTIVITIES OF THE LEAGUE

The work of these three types of organization may be said to be predominantly non-political[16] and in this work the United States, according to the policy defined by Secretary Kellogg, is anxious to cooperate "fully." To what extent is this policy carried out? Of the three technical organizations of the League, only one—the Communications and Transit Organization—consists of government representatives. The advisory committee of this organization is composed of representatives of the 14 members of the League Council together with representatives of other States (now numbering about 13) who are elected by the periodic Conference on Communications and Transit. Although the work of the Communications and Transit Organization is non-political and concerns subjects of importance to the foreign trade of the United States, the American government has not been elected a member of this commission, and it has no representatives upon any of the six permanent committees working under the advisory committee.[17] Representatives of the American government have, however, participated in meetings of several temporary committees, such as the Technical Committee for Maritime Tonnage Measurements, the Committee on the Unification of Transport Statistics, and the Technical Committee on Buoyage and Lighting of Coasts.

Only three of the five advisory commissions are composed of government representatives—the Permanent Advisory Commission on Military, Naval and Air Questions, the Advisory Committee on Traffic in Opium, and the Advisory Commission for the Protection and Welfare of Children and Young People.[18] The American government is represented on the two latter commissions by delegates serving in an expert and advisory capacity.[19]

Although the United States did not approve the Geneva Opium Convention of 1925 and declined to participate in the nomination of members to the Permanent Central Board established under this convention,[20] as requested by the Council, it transmits annual reports drawn up in the forms agreed upon by the advisory commission. It now cooperates with the Central Board in the same manner.[21] It also has adopted the import certificate system as prescribed in the Geneva convention; and it accepted the invitation of the League to include the Philippines within the scope of the League commission of inquiry into the control of opium smoking in the Far East.

The one governmental commission of a temporary nature is the Preparatory Commission for the Disarmament Conference. The United States has cooperated more fully with this important Commission than with any other commission of the League, official

16. The Permanent Advisory Commission on Military, Naval and Air Questions, the Permanent Mandates Commission, and the temporary Preparatory Commission for the Disarmament Conference may be regarded as partly political. The United States fully participates, however, in the work of the latter commission.

17. For the membership of all League committees, etc., cf. *Monthly Summary of the League of Nations*, January 15, 1930.

18. The two latter commissions contain, in addition to government representatives, a number of assessors named by the Council to serve as independent experts. Thus the Commission for the Protection of Children and Young People has 12 government members and 19 assessors—among the latter being several Americans.

19. The present representative of the United States on the Opium Advisory Committee (Mr. John K. Caldwell, a Foreign Service officer assigned to the Department of State) participates in the discussions of the committee.

20. League of Nations, *Official Journal*, October 1928, p. 1672; December 1928, p. 1973. Cf. also *United States Daily*, December 27, 1928, p. 2. The Council nevertheless named an American, Mr. Herbert L. May, as a member of this board, which is composed of eight members not representing governments.

21. Information compiled because of an obligation under the Hague convention is still transmitted by the United States to the government at The Hague, which transmits it to Geneva; information desired by the Central Board under the 1925 convention is transmitted by the United States directly to Geneva, even though the United Staes did not sign the 1925 convention.

American delegations having participated in all of its sessions. Likewise it sent delegations to the Special Committee on the Private Manufacture of Arms (1928-1929). It declined, however, to participate in the Committee on Arbitration and Security created by the Preparatory Commission.

THE LEAGUE HEALTH ORGANIZATION

The Health Organization of the League is a mixed body, composed on the one hand of government officials named by the International Office of Public Hygiene at Paris, and on the other hand of members named by the League Council. This type of organization was devised partly because of the unwillingness of the United States to consent to the amalgamation of the International Office of Public Hygiene in Paris with the League organization.[22]

To overcome this difficulty, the League developed an organization to cooperate with the Paris office, and established an Advisory Council of the League Health Organization, which consists of the committee of the International Office at Paris, and therefore includes the American member—a government official. Moreover, the Health Committee of the League—which is the real governing body—is composed of the president of the Paris committee and nine members named by that committee so that each State which is a permanent member of the League Council will be represented. Six members are also chosen by the League Council which may also have a number of assessors.[23] Under this arrangement, Surgeon-General Cumming, head of the United States Public Health Service, served on the League committee, his appointment being made by the Paris office, of which the United States is a member.[24] The League Council, moreover, has named two Americans, Dr. Alice Hamilton and Professor C. E. A. Winslow, as expert assessors.

Until some three years ago there had been duplication and some misunderstanding between the Paris office and the League Health Committee, but the two bodies have now worked out a system of cooperation.[25] The Paris office continues to be composed of government officials whose outlook is sometimes necessarily nationalistic. The Health Committee, on the other hand, includes among its membership experts who do not speak for their governments and who are able to regard health questions from a purely scientific viewpoint. American members participate in the work of the Health Committee apparently with the same freedom as if the United States were a member of the League.[26]

AMERICAN EXPERTS ON LEAGUE BODIES

The remaining technical bodies and commissions are composed for the most part of individuals appointed by the Council to give advice as experts in regard to non-political matters. In appointing the members of such bodies, the Council has usually selected a number of Americans among other individuals.

Thus the Council has named two Americans—Mr. Jeremiah Smith Jr. of Boston to serve on the Financial Committee, and Mr. Lucius Root Eastman of New York to serve on the Economic Committee. Both bodies form part of the League Economic and Financial Organization. The Financial Committee has actually served as financial adviser to countries desiring League assistance. The Economic Committee, on the other hand, necessarily must study governmental economic policies and attempt to remove friction created by such policies. Consequently, its members, even though technically independent experts, as in the case of the Financial Committee, must keep in much closer touch with governments than the Financial Committee. As a result, the representatives chosen by the Council for the Financial Committee have usually been officials or official advisers to their govern-

22. The United States was a member of the Paris office by virtue of an agreement of December 9, 1907. (W. M. Malloy, *Treaties of the United States*, Vol. II, p. 2214.)

23. League of Nations, *Official Journal*, August 1923, p. 1051.

24. At the 59th Session of the Council, the appointment of Surgeon-General Cumming was made by the Council and not by the Paris office.

25. Article 7 of the revised Sanitary Convention of June 21, 1926 authorizes the International Office of Public Hygiene at Paris to make the "needful arrangements with the Health Committee of the League" in order to fulfill the duties imposed upon the office. The United States was a party to this convention. (United States, *Treaty Series*, No. 762.)

26. The United States Public Health Service is also represented on the Committee of Health Experts on Infant Welfare, the Commission on Standardization of Sera, etc., the Commission on Ship Fumigation, and the Commission for the Study of Leprosy. American experts are members of the Commission of Expert Statisticians, the Joint Commission for the Revision of the International List of the Causes of Death, the Expert Committee on Sleeping Sickness, the Malaria Commission, the Commission on Education in Hygiene and Preventive Medicine, and the Commission on Syphilis.

ments. Mr. Lucius Eastman, the American chosen by the Council to serve on the Economic Committee, is therefore in a somewhat different position, since he is not an official of the American government.[27] Nevertheless, it is understood that he keeps in close touch with Washington.

Finally, the League Council has appointed Professor R. A. Millikan of Pasadena as a member of the Committee on Intellectual Cooperation, and Mr. George W. Wickersham of New York as member of the Committee for the Progressive Codification of International Law.[28]

Generally speaking, it appears to be the present policy of the United States to send delegations to the diplomatic conferences which are called by the League Council as a result of the work of the three technical organizations of the League and of the non-political advisory commissions.[29]

U. S. ADHERENCE TO LEAGUE CONVENTIONS

Of the thirty or so general conventions of a non-political nature drawn up under League auspices, the United States has signed or adhered to the following nine:

- Convention for Supervision of International Trade in Arms and Ammunition, June 17, 1925,[30]
- Protocol for Prohibition of Use of Poison Gas, June 17, 1925,[30]
- Slavery Convention, September 1926 (adhered to),[32]
- Protocol of Signature of the Permanent Court of International Justice, December 16, 1920,[31]
- Draft Protocol for the Accession of the United States, September 14, 1929,[31]
- Protocol for Revision of the Statute of the Permanent Court, September 14, 1929,[31]
- Abolition of Import and Export Prohibitions and Restrictions, November 8, 1927,[32]
- International Convention for the Suppression of Counterfeiting Currency, April 20, 1929,[31]
- Convention for the Suppression of Obscene Publications, September 12, 1923. (Sent to Senate for adherence February 10, 1925.)[30]

The first League convention adhered to by the United States was the Slavery and Forced Labor Convention, which had been drawn up by the Assembly of the League of Nations in 1926, with no American representatives or observers present. It was approved by the Senate on February 25, 1929.[33] In forwarding this treaty to the President for transmittal to the Senate, Secretary Kellogg had suggested a reservation to the effect that "as the functions exercised by the Secretary-General of the League of Nations" under the treaty "are merely those of a depositary and of a transmitting agency, it is not considered that it would be necessary that accession to the convention by the United States be made subject to a reservation indicating the position of this Government with respect to the League. If, however, the Senate should consider that a reservation on this point is desirable, one might be made."[34]

It is interesting to note that the Senate decided that the suggested reservation concerning the League was unnecessary, and approved the convention subject to a reservation concerning those articles sanctioning the transitional use of forced labor for private purposes.[35] The United States deposited its accession to the Slavery Convention with the League on March 21, 1929.

The second League convention to secure the approval of the United States Senate was the Convention for Abolition of Import and Export Prohibitions, which had been signed November 8, 1927 at a League conference in which the United States was represented. In transmitting this treaty to the President, Secretary Kellogg declared that the restrictions which the convention aimed to remove "have been and are causing material detriment to foreign commerce." He added that although the convention imposed certain administrative duties on the League Secretariat, "these provisions include nothing which could alter the status of a non-member State in respect of the League."[36] It was approved by the Senate on September 19, 1929.

27. Americans are represented upon the same basis as other nationals in other committees of the Economic and Financial Organization, such as the Fiscal and Gold Committees, and the Economic Consultative Committee.

28. In addition to appointing American members to the principal committees, the League Council has appointed a large number of Americans to *ad hoc* bodies, and to other League bodies.

29. For the exceptions, cf. p. 170.

30. Now before the Senate.

31. Not yet submitted to the Senate.

32. Ratified.

33. United States, *Treaty Series*, No. 778.

34. *Congressional Record*, Vol. 70, No. 64, February 25, 1929.

35. "Forced Labor," F. P. A. *Information Service*, Vol. V, No. 22, p. 422.

36. *Congressional Record*, September 18, 1929, Vol. 71, No. 71. In contrast to many League conventions which provide that disputes arising out of the convention shall be referred to the Permanent Court of International Justice, the Convention for the Abolition of Import and Export Prohibitions and Restrictions provides that legal disputes arising out of the convention shall be referred either to the Permanent Court of International

There remain seven League conventions signed by the American government which have not yet been ratified. Four of these seven conventions have not yet been submitted to the Senate.

Finally, it should be pointed out that all treaties to which the United States is a party are now either registered or published in the League of Nations *Treaty Series*, issued at Geneva. In case the other party to the treaty is a League member, the treaty is registered by that party at Geneva as a matter of course.[37] In case the other party is also a non-member, such as Mexico, the United States has followed the practice since 1925 of transmitting to Geneva the text of the treaty as it appears in the United States *Treaty Series*, which is published with a special serial number but not registered in the League of Nations *Treaty Series*.[38] It has been suggested that especially since the great majority of the treaties to which the United States is a party are already registered at Geneva by the other parties who are League members, the United States could afford to register its treaties with non-members, thus removing the inconvenience of the special numbering caused by present American practice.[39]

TREATIES NOT SIGNED BY THE UNITED STATES

Despite the avowed policy of the United States to cooperate with the humanitarian and other non-political activities of the League, and despite the steps taken in this direction in recent years, there are a number of examples which indicate that this cooperation is as yet incomplete.

First, there are about twenty League conventions of an economic or humanitarian nature which the United States has not signed. Among them are the following:

Convention Relating to Traffic in Women and Children, September 30, 1921,
Protocol on Arbitration Clauses, September 24, 1923,
Convention Relating to the Simplification of Customs Formalities, November 3, 1923,
Opium Convention, February 19, 1925,
Convention Establishing an International Relief Union, July 12, 1927,
Convention on the Execution of Foreign Arbitral Awards, September 6, 1927,
International Agreement Relating to the Exportation of Hides and Skins, July 11, 1928,
International Agreement Relating to the Exportation of Bones, July 11, 1928,
International Convention Relating to Economic Statistics, December 14, 1928,
Nine conventions relating to communications and transit.

One or two of these conventions, such as the conventions relating to the export of hides, skins and bones, may be primarily the concern of Europe; but this does not seem to be true of others. Thus the purpose of the conventions relating to communications and transit is to facilitate international trade—a subject of importance to the United States. It is understood, however, that the United States has not signed the League conventions relating to communications and transit, partly because the Senate in the past has objected to international regulations governing maritime ports. For example, it attached a reservation to the Treaty of Commerce and Navigation with Germany, reserving the right of Congress to enact legislation contrary to the provisions of the treaty guaranteeing equality of treatment to German vessels in American ports.[40]

As far as the subject of customs formalities is concerned, the United States is a party to the convention of July 5, 1890 providing for the publication of tariffs, and in November 1929 it assisted in the drafting of a Pan-American convention for the simplification and standardization of customs procedure and port formalities.[41] It is not known whether the failure of the United States to adhere to the 1923 League convention is due to opposition to its terms or to the historical fact that the convention was concluded before the United States had evolved its present method of cooperation with the League. Likewise, although it would seem that the League protocol on arbitration clauses and the convention for the execution of foreign

Justice or to an "arbitral tribunal" selected by the parties (Article 8). This provision in regard to the arbitral tribunal was inserted, according to Secretary Kellogg, "especially for the benefit of states which are not members of that court" (i.e., the Permanent Court of International Justice). A similar provision will be found in the Slavery Convention.

37. Cf. League of Nations, *Treaty Series*, Arbitration Treaty, United States and France, February 6, 1928, Vol. XCI, p. 323.

38. Cf. *ibid.*, No. 3B, Convention between the United States and Mexico, August 16, 1927, Vol. LXVIII., p. 460.

39. Cf. Manley O. Hudson, "The Registration of Treaties of the United States," *The American Journal of International Law*, October 1928, p. 852.

40. Reservation was made to Paragraph 5 of Article VII and to Articles IX and XI. (Cf. League of Nations, *Treaty Series*, Exchange of Notes of March 19-21, 1925, Vol. LII, p. 156.)

41. W. M. Malloy, *Treaties of the United States*, Vol. 2, p. 1996; *Treaty Information Bulletin*, No. 2, p. 8 (1929); *ibid.*, No. 3, p. 9.

arbitral awards involve questions affecting American foreign trade, the United States has not signed these conventions. It is even more difficult to understand why the United States has not signed the Convention on Economic Statistics, since an American delegation participated in the conference that drew up the convention.

In the second place, the United States has only representatives "serving in an expert and advisory capacity" on the Opium Advisory Commission and the Commission Relating to the Protection of Children and Young People, although the work of these commissions seems to be entirely of a humanitarian character. Moreover, Miss Grace Abbott, the American representative on the League commission for women and children has been unable to attend its sessions since 1925, because permission has not been granted by the Department of Labor, of which she is an official.

UNITED STATES' SHARE OF LEAGUE EXPENSES

In the third place, the United States is not, according to some observers, paying its full share toward the expenses of these various humanitarian bodies or of the League Secretariat in so far as it deals with humanitarian questions. In 1925 the United States adopted the policy of paying a proportionate share of expenses at each League conference in which it participates—a contribution figured upon the basis of the British contribution. In 1928 it extended this policy to include a share in the expense of committees upon which American government experts have served. The total payments of the United States to the League between 1925 and 1927 were as follows:

Opium Conference, 1925	$2,882.61
Conference on Traffic in Arms	2,700.00
Economic Conference, 1927	9,975.24
Conference on Communications and Transit, 1927	583.23
First Conference on Import and Export Prohibitions	334.43
Preparatory Commission for the Disarmament Conference, 1926, 1927	5,294.97
Total—1925-1927	$21,770.48

In 1928 the United States contributed to the League $2,400, making a total contribution since 1925 of about $24,170. The 1928 figure included a share in the expenses of the fifth session of the Preparatory Commission for the Disarmament Conference; the Second Conference on the Abolition of Import and Export Prohibitions; the Special Commission on Supervision of Private Manufactures of Arms (2nd and 3rd sessions); the meeting of experts on Double Taxation and Fiscal Evasion; the Conference on Economic Statistics; and the Opium Advisory Committee (11th session).

The above sums do not include any share in the general overhead expenses of the Secretariat, the activities of which are devoted in part to non-political matters, nor to the expenses of Mr. Eastman or Mr. Smith, of the League Economic and Financial Committees, of Dr. Alice Hamilton and Dr. Winslow, members of the Health Committee, of Professor Millikan of the Committee on Intellectual Cooperation, of Mr. H. L. May of the Opium Central Board, or of Mr. Wickersham of the Committee for the Progressive Codification of International Law. It is true that the persons just mentioned do not represent governments; nevertheless they do aid in carrying on the humanitarian and economic work of the League. Their expenses are necessarily borne by the League budget, which, however, receives contributions from certain American philanthropic sources, such as the Rockefeller Foundation.

It is interesting to note that in comparison with the 14,415 Swiss francs contributed by the United States to the League in 1928, Great Britain contributed 2,487,000 francs, while Liberia contributed 24,811 francs, or 10,000 francs more than the United States. In view of the fact that the United States is not a member of the League it cannot be expected to contribute as much as member States.[42] Nevertheless, as it is official American policy to cooperate fully with the League's humanitarian and economic work, it is argued that the United States should pay a larger share of League expenses including overhead costs, than it does at present.

IMPORTANCE OF THE COUNCIL AND ASSEMBLY

Finally, it is pointed out that the cooperation of the United States and the League

42. A large share of the contributions of member States goes to the Permanent Court of International Justice and the International Labour Office.

in non-political matters is still incomplete because of the fact that the United States is not represented at the Assembly or Council —the two bodies which control all of the work, political and non-political, of the League. These bodies fix the scope of the work of the non-political agencies of the League in which the United States now participates; they determine whether or not the recommendations of the technical organizations shall be carried into effect through an international convention or otherwise.[43] For example, the American member of the Economic or Child Welfare Committee may vigorously work for the adoption of a proposal and as a result of his efforts the proposal may be adopted. But when it is referred to the Council for approval it may be overturned partly because of the absence of the support of the United States.

Whether in political or non-political matters, the position of the United States is bound to be discussed or at least borne in mind at meetings of the Council or the Assembly. At present that position is not stated by the American representative; and in the absence of such representation, the interest of the United States may be slighted if not injured. For example, four out of the five powers represented at the recent London Naval Conference will give their version of that conference to the Assembly, containing representatives of perhaps 54 States, this September. But the American version of the conference will not be presented by an American spokesman.[44] This situation is causing some observers to believe that out of self-interest the United States should, while not necessarily seeking membership in the League, attempt to secure some form of representation in the Assembly or Council—or at least the right to speak in matters affecting the interests of the United States. It also pointed out that a disinterested government, provided it is courageous, may have a powerful influence in assisting in the settlement of disputes, in the development of such international experiments as the mandate system, and in promoting peace generally.

The only representation so far of the United States at the Assembly occurred in September 1923, when Congressman Stephen G. Porter, Bishop Brent and Surgeon-General Blue participated "in a purely advisory capacity" in the work of the fifth committee in order to present the American view concerning the international control of the opium traffic.[45]

At present the American Consul at Geneva and the American Minister at Berne deal with League matters affecting the United States, in addition to their other duties.[46]

The proposal has been made that in order to protect the self-interests of the United States and to participate generally in the organization of peace, the United States should send an accredited representative with the rank of Ambassador to attend meetings of the Council and Assembly.[47]

THE UNITED STATES AND THE PACIFIC SETTLEMENT OF DISPUTES

The United States, although it has not joined the League of Nations, has nevertheless worked out a policy for the pacific settlement of disputes which, in certain respects, parallels the policy League members undertake to follow. Recent American policy is based upon the anti-war pact of August 27, 1928, which provides not only for the renunciation of war as an instrument of national policy but also for the pacific settle-

43. Cf. Manley O. Hudson, "America's Rôle in the League of Nations," *American Political Science Review*, February 1929.

44. For the discussion at the Assembly concerning the 1926 treaty between the United States and Panama, cf. "Mexico, the Caribbean and Tacna-Arica," F. P. A. *Information Service*, Vol. III, No. 23, January 20, 1928, p. 359.

45. League of Nations, Records of the Fourth Assembly, Minutes of the Fifth Committee, Special Supplement, No. 18, p. 6, 41, 52. In 1921 the United States government declared that the future of the mandates could not be decided without its consent. The Council of the League then invited the American government to send a representative to the next Council meeting to discuss the question; but the United States did not accept this invitation. *Minutes of the 13th Session of the Council*, 1921, Annex 185.

46. In January 1930 it was announced that the State Department had decided to move the site of the consulate quarters at Geneva to a site nearer the League. (*New York Times*, January 5, 1930.) Following this announcement, it was reported that the United States might follow the example of the Mexican government in appointing an "observer" at Geneva. (*Ibid.*, January 29, 1930 and March 6, 1930.) The State Department denied, however, that any change in the relationship of the United States to the League was under consideration. (*Ibid.*, January 29, 1930.) On June 3, 1930 the State Department announced the appointment of Mr. Prentiss Gilbert, Assistant Chief of the Division of Western European Affairs, to become Consul at Geneva which was confirmed by the Senate on June 12. To permit Mr. Gilbert to assume this position, it was necessary to transfer him from the State Department to the Foreign Service. This transfer is one of the first of its kind to be made since the passage of the Rogers act. (*New York Times*, June 4, 1930.)

47. R. L. Buell, *In the League and Out*, Foreign Policy Association, Pamphlet No. 63, p. 22; also "The Next Ten Years of the League," *The World Tomorrow*, June 1930.

ment of disputes. That is, in Article 2 the parties agree that the settlement of all controversies "of whatever nature or of whatever origin shall never be sought except by pacific means." In accordance with the general principle expressed in this article the United States has concluded a series of bilateral treaties providing (1) for the compulsory arbitration of certain legal disputes and (2) for the compulsory investigation of all other disputes threatening to lead to conflict.

THE NEW BILATERAL ARBITRATION TREATIES

On February 6, 1928 the United States signed with France the first of a new series of arbitration treaties which supplant the Root arbitration treaties negotiated in 1908-1910.[48] Dropping the reservation of the Root treaties in regard to "vital interests and the independence or the honor" of the parties, the new arbitration treaties provide for the arbitration of disputes "which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity." Nevertheless, disputes shall not be arbitrated the subject matter of which (1) is within "the domestic jurisdiction" of either party, (2) involves interests of third parties, (3) concerns the Monroe Doctrine, or (4) involves the obligations of France under the League Covenant.[49]

Since December 1927 the United States has signed arbitration treaties on the model of the French treaty with the following countries: Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Germany, Hungary, Italy, Jugoslavia, Latvia, Lithuania, Luxemburg, the Netherlands, Norway, Poland, Portugal, Rumania and Sweden[50]—a total of twenty four.

At present arbitration treaties of the Root type are still in force between the United States and Brazil, Ecuador, Haiti, Liberia, the Netherlands, Peru and Uruguay.[51]

It should be pointed out that the United States has no general arbitration treaty, whether of the pre-war or post-war type, with Great Britain or any other unit in the British Commonwealth of Nations, or with Argentina, China, Spain, Japan or Russia.[52]

In addition to these bilateral arbitration treaties, the United States signed without reservation the inter-American arbitration treaty of January 5, 1929, which provides for the arbitration of virtually the same subjects as are contained in the Optional Clause of the World Court. This treaty, therefore, marks an important advance in the arbitration policy of the United States.[53] The United States Senate, however, has not as yet approved the ratification of this treaty.

The United States has also signed the protocols of adherence to the Permanent Court of International Justice (the World Court), but the agreements have not been sent to the Senate for ratification, and the President has not indicated when he will ask for Senate action.[54]

THE BRYAN PEACE COMMISSION TREATIES

In the so-called peace commission or conciliation treaties, originally negotiated by Secretary of State Bryan in 1914, the United States agreed to submit to the investigation of permanent commissions all disputes not submitted to arbitration. The commission had to make its report within one year and this report was limited to finding facts—it could not recommend a solution.[55] The commission authorized in each of the treaties was to be organized within six months and was to be composed of five members: one from each country, chosen by the government thereof; one member chosen by each

48. Cf. Malloy, cited, for treaty of February 10, 1908 with France, Vol. I, p. 549. Twenty-two such treaties went into effect. As a majority of these treaties were for a five-year period, many were not renewed, so that in 1926 only 13 were in force. (Cf. table in Denys P. Myers, *Arbitration and the United States*, World Peace Foundation, Vol. IX, 1926, p. 523.)

49. Cf. Chandler P. Anderson, "New Arbitration Treaty with France," *The American Journal of International Law*, for a criticism of the reservations in these treaties, April 1928, p. 368; cf. also M. O. Hudson, cited, p. 370, and J. W. Garner, "The New Arbitration Treaties of the United States," *ibid.*, July 1929, p. 595.

50. Cf. State Department, *Press Releases*, January 18, 1930, p. 20.

51. *Ibid.*, p. 19.

52. The Root treaty with Great Britain lapsed on June 4, 1928 and has not yet been replaced with a treaty of the type concluded with France, although such a treaty was offered to Great Britain by the State Department.

53. Cf. W. T. Stone, "The Pan-American Arbitration Treaty," F. P. A. *Information Service*, Vol. V, No. 18, November 13, 1929.

54. Cf. V. M. Dean, "The Permanent Court of International Justice," F. P. A. *Information Service*, Vol. V, No. 21, December 25, 1929.

55. Cf. C. C. Hyde, "The Place of Commissions of Inquiry and Conciliation Treaties in the Peaceful Settlement of International Disputes," *British Yearbook of International Law*, 1929, p. 96.

government from some third country; the fifth member, a neutral, to be chosen by common consent—the latter to serve as president. Nevertheless, until 1926 little effort was made to keep the membership of these commissions filled. Whether because of neglect to make the original appointment or to fill vacancies caused by death or resignation, the membership of these commissions was complete only in the case of treaties with Denmark, Portugal and Sweden.[56]

During the last two years, however, the American State Department has attempted to fill the membership of these commissions and also to negotiate conciliation treaties with new States. At the present time the United States has such treaties with the following countries: Albania, Austria, Bolivia, Brazil, Chile, China, Czechoslovakia, Denmark, Ecuador, Finland, France, Germany, Great Britain, Italy, Jugoslavia, the Netherlands, Norway, Paraguay, Peru, Portugal, Russia, Spain, Sweden, Uruguay and Venezuela—a total of twenty-five.[57] In May 1928 it announced the appointment of American members to fill all existing vacancies upon these commissions. Nevertheless, in December 1929 membership was complete only in the case of the treaties with Denmark, Finland, the Netherlands, Norway, Spain and Sweden.[58]

Such, in brief, is the machinery which the United States has created for the pacific settlement of disputes. With respect to compulsory arbitration, the United States has not as yet accepted such extensive obligations as have those States which are signatories of the Optional Clause of the World Court Statute.[58a] Whereas under this clause the World Court is given among other things jurisdiction to determine whether or not a given dispute falls within the scope of the Optional Clause, the United States has insisted upon determining this for itself.[59] The American government still follows the practice of submitting the special agreement for arbitration to the Senate, thus giving the latter body a veto over arbitration enjoyed by few other legislative bodies in the world.[60] Moreover, the United States has not yet entered the World Court.

THE PRINCIPLE OF JOINT MEDIATION

In the settlement of non-legal disputes, the United States is merely pledged to submit such disputes to investigation under the Bryan conciliation treaties; after the question has been investigated by a commission, the United States regains its freedom of action. But it has been argued that such freedom is now limited by the Kellogg anti-war pact, so that in effect one may say that the United States has accepted obligations somewhat similar to those of League members. It should be pointed out, however, that the League Council is empowered to recommend a solution, whereas the Bryan peace commission treaties give us no such authority.[61]

Even though nations accept the principle of compulsory arbitration or compulsory investigation, it has sometimes happened that, whether because of the tenseness of feeling or for some other reason, two parties to a dispute may not apply these principles or use the machinery for peaceful settlement, but instead threaten resort to war. The United States, for example, despite its good arbitration record in the past, did not resort to arbitration or investigation before using force in solving its difficulties with Mexico, Santo Domingo or Haiti from 1914 to 1916. Moreover, there are cases on record in which States have ignored the award of an international tribunal or declined to appoint a commission of inquiry or an arbitrator. There

56. Myers, cited, p. 540.

57. State Department, *Press Releases*, December 21, 1929, p. 123.

58. *Ibid.*, December 21, 1929, p. 123. Membership on the other commissions was incomplete apparently because of failure of other governments to appoint their commissioners.

58a. The signatories of the Optional Clause recognize the compulsory jurisdiction of the Court in cases concerning: (1) the interpretation of a treaty; (2) any question of international law; (3) the existence of any fact which, if established, would constitute a breach of an international obligation; (4) the nature or extent of the reparation to be made for the breach of an international obligation.

59. The United States departed from the practice of deciding for itself whether or not a dispute is suitable for arbitration under the terms of a treaty when it ratified the Convention for the Abolition of Import and Export Prohibitions and Restrictions of November 8, 1927. In Article 8 of this Convention the parties agree that legal disputes arising as to the interpretation and application of the convention shall be referred to arbitration, and also that "in the event of any difference of opinion as to whether a dispute is of a legal nature or not, the question shall be referred for decision to the Permanent Court of International Justice or to the arbitral tribunal selected by the parties." In approving this convention, the Senate made no reservation to Article 8. (United States, *Treaty Series*, No. 811.)

60. The nearest approach to American practice is found in Brazil. The arbitration treaty of January 23, 1909 states that the special agreement in the case of Brazil shall require the "approval of the two Houses of the Federal Congress. . . ." (Malloy, cited, Vol. III, p. 2505.)

61. However, in the inter-American conciliation convention of January 5, 1928, the United States accepted the provision authorizing the peace commissions established in the Gondra inter-American treaty of 1923 to recommend a solution. (Cf. *Proceedings of the International Conference of American States on Conciliation and Arbitration*, Washington, December 1928, p. 29.)

have been a number of such cases in Latin America,[62] and the United States in 1911 declined to carry out the award of an arbitral tribunal in the case of the Chamizal tract, a boundary dispute with Mexico.[63]

An example of failure to appoint a commission to investigate was afforded in the Bolivia-Paraguay dispute over the Chaco in 1929. Paraguay requested the diplomatic body at Montevideo to organize a commission of inquiry under the Gondra convention of 1923;[63a] but Bolivia declined to appoint its members, on the ground that the Bolivian Legislature had not approved the convention. Even had Bolivia done so, long negotiations would have been necessary to establish such a body.

For many years the right of the international community to mediate between two States which threaten to go to war, despite promises to settle their disputes pacifically, has been recognized. This principle of mediation was embodied in the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907,[64] but assumed new importance with the establishment of League machinery.

Article XI of the League Covenant provides that any war or threat of war is of concern to the League and that it is the "friendly right" of each League member "to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Under this article an international body (the Council) may act upon the initiative of any League member to urge parties to settle a dispute by peaceful means.

AMERICAN OBLIGATIONS TO MEDIATE

While the United States has not accepted any general obligation to cooperate with other powers in thus safeguarding international peace, American spokesmen have recognized the importance of the principle;[65] and the United States government has accepted not only the right but the obligation of joint mediation in certain specific areas.

Thus the United States was a party to the Four-Power Pact of the Pacific of December 13, 1921 which provided:

> I
>
> "The High Contracting Parties agree as between themselves to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean.
>
> "If there should develop between any of the High Contracting Parties a controversy arising out of any Pacific question and involving their said rights which is not satisfactorily settled by diplomacy and is likely to affect the harmonious accord now happily subsisting between them, they shall invite the other High Contracting Parties to a joint conference to which the whole subject will be referred for consideration and adjustment.
>
> II
>
> "If the said rights are threatened by the aggressive action of any other Power, the High Contracting Parties shall communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation."[66]

The United States is also a party to the Pan-American Conciliation Treaty of January 5, 1929. This treaty provides that diplomatic committees composed of the three longest-accredited American diplomats at Montevideo or Washington "shall be bound to exercise conciliatory functions, either on their own motion when it appears that there is a prospect of disturbance of peaceful relations, or at the request of a Party to the dispute," until the *ad hoc* commissions provided for in the treaty are established.[67] The United States has not only signed treaties providing for joint conferences, but it has participated in efforts to press States to settle disputes amicably.

Following the outbreak of the boundary

62. A. S. Waddell, "Unsettled Boundary Disputes in Latin America," F. P. A. *Information Service*, Vol. V, No. 26, March 5, 1930, p. 495. For the case of Tacna Arica, cf. "Mexico, the Caribbean and Tacna-Arica," cited, p. 366.

63. The United States declared that the award was not "valid or binding." (United States, *Foreign Relations*, 1911, p. 598.)

63a. This multilateral convention provides for the organization of a commission of inquiry by either one of two permanent diplomatic commissions, one at Montevideo and one at Washington, at the request of the parties to a dispute. (Cf. F.P.A. *Information Service*, Vol. IV, No. 17, October 28, 1928, "Arbitration on the American Continent."

64. Article III, Convention of July 29, 1899. Article II, Convention of October 18, 1907, declared that it is desirable that "one or more Powers, strangers to the dispute, should on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the States at variance."

65. The platform of the Republican party in 1920 declared in favor of "instant and general international conference whenever peace shall be threatened by political action, so that the nations pledged to do and insist upon what is just and fair may exercise their influence and power for the prevention of war." In his Armistice day speech, President Hoover declared that what was urgently needed was a "further development of methods for reference of unsettled controversies to joint inquiry by the parties, assisted by friendly nations, in order that action may be stayed and that the aggressor may be subjected to the searchlight of public opinion." In his speech of April 14, 1930, President Hoover declared: "The difficulties in the instance of the Chinese-Russian dispute show the clear need of some method of mobilization of public opinion against the violation of the Kellogg pact."

66. United States, *Treaty Series*, No. 669.

67. *Proceedings*, cited, p. 640.

dispute between Bolivia and Paraguay in January 1930, the Pan-American Arbitration Conference and the League Council, acting independently, urged the two countries to settle their differences peacefully. As a result, Bolivia and Paraguay accepted the good offices of the Pan-American conference, and a Commission of Inquiry —composed of representatives of Colombia, Cuba, Mexico, the United States and Uruguay—was appointed to establish the facts in dispute. Later the commission was authorized by Bolivia and Paraguay to submit suggestions for a permanent settlement of the boundary question between the two countries.[68]

U. S. POLICY IN RUSSO-CHINESE DISPUTE

In addition to cooperating with other powers in mediating the Bolivia-Paraguay dispute, the United States also took the initiative in attempting to mediate the dispute between Russia and China over the Chinese Eastern Railway which had led to fighting upon the Manchurian frontier. A brief review of the steps taken in this case may be pertinent. On July 18, 1929, after conversations with diplomatic representatives of five powers at Washington, Secretary Stimson called the attention of the two governments to their obligations under the anti-war pact.[69] Although each government replied that it would not resort to war unless attacked, hostilities continued until in the latter part of November 1929 the Russians were reported to have invaded northern Manchuria. In a note addressed to both powers, made public on December 2, the United States declared:

> "The American Government desires again to call attention to the provisions of the treaty for the renunciation of war, particularly to Article II. . . The American Government takes occasion to express its earnest hope that China and Russia will refrain or desist from measures of hostility and will find it possible in the near future to come to an agreement between themselves upon a method for resolving by peaceful means the issues over which they are at present in controversy. The American Government feels that the respect with which China and Russia will hereafter be held in the good opinion of the world will necessarily in great measure depend upon the way in which they carry out these most sacred promises."[70]

In a statement accompanying the publication of this note, Secretary Stimson declared:

> "We have been engaged in discussions with the governments of several of the other powers signatory to the Pact of Paris in regard to the situation in Manchuria. . . . The efficacy of the Pact of Paris depends upon the sincerity of the governments which are party to it. Its sole sanction lies in the power of public opinion of the countries, constituting substantially the entire civilized world, whose governments have joined in the covenant. If the recent events in Manchuria are allowed to pass without notice or protest by any of these governments, the intelligent strength of the public opinion of the world in support of peace cannot but be impaired.
>
> "We have found in our discussions referred to above, community of view with regard to the fundamental principles. There has been in these discussions no suggestion of intervention of any kind. Discussions have been directed to discovering the best means of expressing the opinion of each of the nations by way of remonstrating against the use of force by either side in this controversy."[71]

In an oral statement Secretary Stimson also said that it was not the part of the United States "to determine the merits or causes of the dispute." He denied that the action of the United States necessarily made it appear that force could not be used in supporting the Kellogg pact.

In addition to its own warning to Russia and China, the United States cabled to more than 50 parties to the pact, expressing the hope that each would see its way clear to address the Chinese and Russian governments in a sense similar to or identical with the communication which the American government intended to send. Thirty-four governments (apart from China and Russia) replied to the United States and apparently 25 governments sent statements to Russia and China similar to that from Washington. Japan, however, did not favor the American suggestion; and Austria, Turkey, Siam, Germany, Denmark, Hungary, Poland, Sweden and Switzerland did not wish to act, at least not at once.[73]

68. Commission of Inquiry and Conciliation, Bolivia and Paraguay, *Report of the Chairman*, Washington, 1929; cf. also "Unsettled Boundary Disputes in Latin America," cited, p. 488.

69. The note to the U.S.S.R. was transmitted to the Soviet authorities through the French Foreign Office.

70. *United States Daily*, December 3, 1929, p. 2.

71. State Department, *Press Releases*, December 7, 1929, p. 83.

73. *Ibid.*, p. 87, 101, 119.

The Soviet government, in reply to the United States, declared that China had illegally seized the Chinese Eastern Railway, and added:

> "The Soviet Government believes that if action such as that . . . were taken toward the United States, Great Britain or France it would be considered by their governments sufficient cause for putting into force reservations they made when signing the pact.
>
> "The Soviet Government declared when signing that it did not recognize the reservations and did not intend to use them. .
>
> "The Soviet Government states that the government of the United States has addressed its declaration at a moment when the Soviet and Mukden Governments already had agreed to several conditions and were proceeding with direct negotiations which would make possible prompt settlement of the conflict between the Soviet Union and China.
>
> "In view of this fact the above declaration cannot but be considered unjustifiable pressure on the negotiations, and cannot therefore be taken as a friendly act.
>
> "The Soviet Government states further that the Paris pact does not give any single State or group of States the function of protector of this pact. The Soviet, at any rate, never expressed consent that any States themselves or by mutual consent should take upon themselves such a right. . . ."[74]

REACTION TO STIMSON POLICY

Former Secretary of State Frank B. Kellogg, one of the authors of the anti-war pact, defended the action of the administration in the Russo-Chinese dispute. In a New York address he declared:

> "It was certainly the business of the United States to do everything it could to prevent the violation of a treaty which it and the other nations had signed . . . The time is past when war is of interest only to the belligerents . . . it is now of interest to all the world. . . It certainly is the duty of any of the signatories of this multilateral world treaty to use every legitimate influence to maintain its integrity and to prevent conflicts in violation of it."[75]

Some observers who recognized the importance of this incident nevertheless pointed out that under the anti-war pact the United States did not inquire into or assist in the solution of the dispute which had provoked the difficulty. Others did not feel that it was wise for the United States to assume the initiative in calling attention to the violation of the anti-war pact, believing this should be done rather by some system of international machinery so that if the effort failed the responsibility for failure could not rest upon a single State. Moreover, it was pointed out that in attempting to mobilize public opinion, the United States made use of the cumbersome process of diplomatic conversations instead of a conference system such as that which exists at Geneva.[76]

It is reported that following the Russo-Chinese incident, Secretary Stimson realized that some further steps were necessary if the admonitions of the powers against a violation of the anti-war pact were not to be futile and that he began conversations with the French Ambassador in regard to the establishment of some international system of inquiry and report.[77]

A further step in the development of this principle of joint mediation was proposed at the London Naval Conference, in connection with the so-called consultative pact.[78] If such a convention were concluded, it is possible that the United States might in certain cases and under certain circumstances cooperate with the conciliatory machinery of the League.[79]

It is contended by a number of authorities that the United States is already under the obligation to consult with other powers by virtue of Article 2 of the anti-war pact. Thus former Secretary of State Frank B. Kellogg declared in a New York address: "It is not necessary that this treaty [i. e., the anti-war pact] should contain provisions for consultation in the event of threatened hostility. Such consultation is inherent in the treaty."[80] If this interpretation is correct, the problem of establishing consultative machinery would nevertheless remain to be solved.

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74. The final paragraph was as follows: "In conclusion the Soviet Government cannot forbear expressing amazement that the government of the United States, which by its own will has no official relations with the Soviet, deems it possible to apply to it with advice and counsel." (*New York Times*, December 4, 1929.)

75. *New York Times*, March 29, 1930.

76. R. L. Buell, "Stimson Note on Sino-Russian Dispute Termed Warning Against Peace Pact Violation," *New York Herald Tribune*, December 8, 1929.

77. Cf. E. L. James, "The Difficult Road to World Peace," *New York Times*, April 20, 1930.

78. Cf. W. T. Stone, "The London Naval Conference," F. P. A. *Information Service*, Vol. VI, No. 6, May 28, 1930, p. 108.

79. Cf. p. 184.

80. *New York Times*, March 29, 1930. Cf. James T. Shotwell, "Alternatives for War," *ibid.*, March 19, 1930. It is also suggested that a Presidential declaration, rather than a treaty, would be sufficient to establish a policy whereby the United States would consult with the other signatories of the anti-war pact whenever any violation of the pact seems possible. (Lindsay Rogers, "The United States, Parity and Neutrality," *The Contemporary Review*, February 1930.)

THE UNITED STATES AND SANCTIONS

As shown in the preceding sections, the United States has not only developed a policy of participating in the non-political activities of the League, but has also worked out a policy for the pacific settlement of disputes which, to a certain extent, parallels that of the League. What is the attitude of the United States with respect to the third principle of international cooperation embodied in the League Covenant—the principle of sanctions? Article XVI of the Covenant provides that in case a State resorts to war in violation of its obligations, League members shall impose an economic blockade, and the Council may recommend what military measures should be taken by the several governments concerned. No article of the Covenant has been more discussed by members of the League than Article XVI, and sharp differences of opinion have arisen between the European members. Thus, during the London Naval Conference, British opinion as expressed through the press was overwhelmingly opposed to any strengthening of the sanctions' provisions, while France was urging new measures for security based on the principles of Article XVI.[81] But both groups of League opinion have repeatedly expressed the fear that the imposition of a blockade would involve a clash between the League and the United States—a non-member State whose commercial interests would inevitably be affected by blockade, and whose policy of neutrality might lead to conflict. Should the United States insist upon its right to trade with a nation adjudged an aggressor by the League, and against which the League had imposed a blockade, grave difficulties might arise. Some go so far as to say that the League could not afford to run the risk of a clash with the United States and that consequently as long as the position of the United States is uncertain, the League is powerless to use economic pressure.

The problem confronting the United States, therefore, is whether it should determine its position in advance with respect to collective action by the League. Specifically, should it express its opposition to the use of force or economic pressure, should it participate in an economic blockade against a State which it recognizes as an aggressor, or should it merely promise not to interfere with measures taken by the League against a State violating the Covenant?

While the whole question of sanctions is too involved to be discussed in detail here, it may be noted that in times past leading American statesmen, including spokesmen of the Republican party, have recognized the desirability of some form of international action for the preservation of peace. In 1910 the American Congress passed a resolution authorizing the appointment of a commission to consider the expediency of "constituting the combined navies of the world an international force for the preservation of universal peace. . . ."[82]

Presidents Roosevelt and Taft, as well as Senator Lodge, all declared at one time or another that force should be placed behind international law.[83] Moreover, the United States has frequently used force to impose its conception of international law[84] upon various small countries, such as Haiti, Santo Domingo and Nicaragua.

In 1921 the United States sent a battleship with 400 marines to enforce an arbitral award against Panama in favor of Costa Rica.[85] It did not, however, attempt to enforce the Tacna-Arica award.

AMERICAN OPPOSITION TO SANCTIONS

Nevertheless, political sentiment in the United States has within recent years been outspoken against international sanctions. This sentiment does not seem to arise so much out of the pacifist belief that the use of force is morally wrong, but out of an unwillingness to pledge the use of force in advance or to submit it to any form of inter-

81. Mr. J. L. Garvin wrote in *The Observer* (April 6, 1930): "Nothing stands more in need of revision than the cumbrous and obsolete provisions of Article XVI, contemplating a series of 'sanctions, armed and economic.'" During the last four years, the emphasis in discussions at Geneva has apparently shifted from the use of force (Article XVI) toward measures for prevention of war (Article XI) as the first task of the League.

82. 36 United States Statutes, 885; R. L. Buell, *International Relations* (rev. ed.), p. 594.

83. In 1916 Henry Cabot Lodge declared that the next step "is to put force behind international peace." (Buell, cited, p. 594.)

84. The United States has landed troops (including marines) upon foreign soil without the declaration of war on more than one hundred occasions during the last 115 years. (Cf. M. Offutt, *The Protection of Citizens Abroad by the Armed Forces of the United States;* R. L. Buell, "The Protection of Foreign Lives and Property in Disturbed Areas," *Annals of the American Academy of Political and Social Science,* July 1929.)

85. Waddell, "Unsettled Boundary Disputes in Latin America," cited, p. 496.

national control. Thus a majority in the Senate in 1920 refused to accept any obligations under Article X of the Covenant.[86] Likewise the Senate made a reservation to the Four-Power-Pact of the Pacific to the effect that under this treaty "there is no commitment to armed force, no alliance, no obligation to join in any defense."[87]

Testifying before the Senate Committee on Foreign Relations, Secretary Frank B. Kellogg declared:

> "We have no more obligation to punish somebody for breaking the anti-war treaty than for breaking any one of the other treaties which we have agreed to."[88]

Another indication of the American attitude was given in President Hoover's Armistice Day speech (November 11, 1929), and again in his speech of April 14, 1930 to the Daughters of the American Revolution. In the former address the President declared:

> "The European nations have, by the covenant of the League of Nations, agreed that if nations fail to settle their differences peaceably then force should be applied by other nations to compel them to be reasonable. We have refused to travel this road. We are confident that at least in the Western Hemisphere public opinion will suffice to check violence. This is the road we propose to travel."[89]

In the D. A. R. address, the President declared:

> "The nations of Europe, surrounded as they are by dangers and problems of which we in the Western Hemisphere have but little appreciation, and beset by inherited fears, hold to the view that aside from the World Court the pacific settlement of controversies and the maintenance of peace should be backed by potential coercion through pooling of either military or economic strength. We do not question their right to come to such conclusions as they see fit to follow, arising as they do from their terrible experience and their necessities. But the instinct of the vast majority of our people is that our contribution is not to be based upon commitments to use force to maintain peace.
>
> "This arises both from a feeling that the threat of force conflicts with the purpose of peaceful efforts, and from the limitation it might place upon our independent action where we have only indirect interest.
>
> "We have come to the belief that our contribution can best be made by our good offices and a helpfulness based upon independence from any combination pledged to the use of force. I believe it is clear that the United States can more effectively and wisely work for peace without commitments to use coercion to enforce settlements."

If, as President Hoover suggests, the United States does not question the "right" of the League to make provisions for sanctions, a number of students believe that the United States should make it clear that the American government will not obstruct the application of a League blockade, even though it should incidentally injure American commerce. They declare that it is inconceivable that the United States, having accepted the anti-war pact, should insist upon the right to trade with a nation violating that pact.

Others believe that the United States should go further and take active steps against a State which flagrantly violates the anti-war pact. If the United States follows a policy which warns a State not to violate the pact but then remains silent if the State proceeds to a violation, many observers believe that the United States will be placed in an impossible position.

Thus, Senator Borah, in an interview in the *New York Times* of March 25, 1928, was quoted as saying:

> "Another important result of such a treaty [the anti-war treaty] would be to enlist the support of the United States in cooperative action against any nation which is guilty of a flagrant violation of this outlawry agreement. Of course, the Government of the United States must reserve the right to decide, in the first place, whether or not the treaty has been violated, and second, what coercive measures it feels obliged to take. But it is quite inconceivable that this country would stand idly by in case of a grave breach of a multilateral treaty to which it is a party."

THE CAPPER RESOLUTION

In an effort to define the American attitude toward sanctions more clearly, several resolutions have been introduced in Congress during the last few years. These resolutions fall under three main heads. The resolution introduced by Senator Arthur Capper of Kansas on February 11, 1929 is typical of the first type. It contains two

86. 59 *Congressional Record*, March 19, 1920, p. 4599.

87. United States, *Treaty Series*, No. 669, p. 5.

88. *United States Daily*, December 31, 1928, p. 2.

89. This statement apparently overlooks the fact that the majority of the Latin American republics are members of the League; and that the United States has frequently used force to "check violence" in Central and South America. The United States has not, however, placed the use of this force under the restraint of international law.

principles: (1) an authorization to the President to impose an arms embargo upon a State which violates the anti-war pact, the violator being designated by Presidential proclamation; and (2) an undertaking by the United States that it will not protect nationals engaged in trading with an aggressor.[90]

Several objections were raised against the Capper resolution. One was that it would be a violation of neutrality for the United States to impose an embargo upon one and not the other belligerent.[91] Objection was also made to vesting the President with the power to determine which of two States is the aggressor. It was declared that, as in the case of the war-making authority, this power should be exercised only by Congress. In reply to these criticisms, it was stated that the law of neutrality has been changed not only by the League Covenant but by the anti-war pact. That is, if a State goes to war in violation of the pact, it is argued that the United States is under no obligation to treat such a State as a neutral—i.e., as one engaged in legal war—but as a State which has violated its obligations.[92] It is also declared that the President would undoubtedly consult with other nations in determining the aggressor.[93]

THE BURTON RESOLUTION

An example of the second type is the resolution introduced by the late Representative Theodore E. Burton, reported to the House by its Committee on Foreign Affairs, January 30, 1928. This makes the imposition of an arms embargo upon all belligerents mandatory upon the outbreak of war unless Congress decides to the contrary.[94]

The Burton resolution met with opposition, partly on the ground that an embargo might do great injury to one belligerent and little to another without regard to the question as to which of the belligerents was fighting in self-defense. For example, the imposition of such an embargo by the United States during the World War might have injured the Allies much more than Germany.[95] It has been declared, moreover, that if a government could not depend upon importing arms from abroad during war, it would be encouraged to develop in peacetime arsenals of its own—thus defeating the cause of disarmament.[96]

THE PORTER RESOLUTION

A third proposal designed to meet some of the objections to the Capper and Burton resolutions was introduced by Congressman Stephen G. Porter on February 11, 1929. The Porter resolution sought to extend the existing authority of the President to impose an arms embargo in disturbed areas on the American continents to all other parts of the world. Whenever the President finds that "in any country, conditions of domestic violence or of international conflict exist or are threatened, which are or may be promoted by the use of arms or munitions of war procured from the United States, and makes proclamation thereof, it shall be unlawful to export except under such limitations and exceptions as the President prescribes, any arms or munitions of war from any place in the United States to such country until otherwise ordered by the President or by Congress."[97]

This resolution is merely an extension of the present arms embargo policy of the United States under which the President has power to impose an embargo upon arms to American countries where domestic violence prevails and to any country where the United States exercises extraterritorial juris-

90. The text of the articles follows: "Article I. That whenever the President determines, and by proclamation declares, that any country has violated the multilateral treaty for the renunciation of war, it shall be unlawful, unless otherwise provided by Act of Congress or by proclamation of the President, to export to such country arms, munitions, implements of war or other articles for use in war until the President shall by proclamation declare that such violation no longer continues.

"Article 2. It is declared to be the policy of the United States that the nationals of the United States should not be protected by their Government in giving aid and comfort to a nation which has committed a breach of the said treaty."

Article 3 requested the President to negotiate an international agreement to this effect.

91. This was Secretary Kellogg's view. (Cf. "Prohibiting the Exportation of Arms or Munitions of War from the United States to Certain Countries," *Hearings before the Committee on Foreign Affairs*, House of Representatives, 70th Congress, 2nd Session, H.J.Res. 416, p. 3.)

92. James T. Shotwell, *War as an Instrument of National Policy*, p. 222.

93. Cf. p. 134.

94. "Whenever the President recognizes the existence of war between foreign nations by making proclamation of the neutrality of the United States, it shall be unlawful, except by the consent of the Congress, to export or attempt to export any arms, munitions, or implements of war from any place in the United States or any possession thereof, to the territory of either belligerent. . . ."

95. "Exportation of Arms, Munitions or Implements of War to Belligerent Nations," *Hearings before the Committee on Foreign Affairs*, House of Representatives, 70th Congress, 1st Session, H.J.Res. 183; J. P. Chamberlain, "The Embargo Resolutions and Neutrality," *International Conciliation*, June 1929.

96. Cf. United States, *Foreign Relations*, 1915 (Supplement), Secretary of State Lansing in reply to Austria-Hungary's request to impose an arms embargo August 12, 1915, p. 796.

97. *United States Daily*, February 12, 1929, p. 3.

diction.[98] In some cases the United States has, however, allowed the constituted government to import arms, so that the embargo has applied only to purchases by revolutionists. It is argued that if this policy is now extended, in accordance with the original Porter resolution, the President may similarly distinguish between a State fighting an aggressive war and a State fighting in self-defense. Generally, the original Porter resolution imposes a greater degree of discretion upon the President than does the Burton resolution, which would make the imposition of an embargo upon both belligerents mandatory upon the recognition of the existence of war.[99]

CRITICISM OF ARMS EMBARGOES

All of these proposals have been criticized on the ground of misplaced emphasis. It is declared that before the United States adopts any such policy it should first agree to participate in efforts to prevent by conciliatory measures the outbreak of war.[100]

The imposition of an arms embargo emphasizes the policy of sanctions following the outbreak of war, whereas the emphasis should be placed, in the opinion of many students, upon preventing war from breaking out—i.e., upon the pacific settlement of disputes. Incidentally, the establishment of a system for peaceful settlement of disputes is also believed to be necessary to determine which of two States is the aggressor, in case war finally does break out. If no such preventive machinery exists, there will be no judicial means of determining which of the belligerent powers has actually violated its obligations.

Under the Covenant, the League Council may determine which State violates its obligations and illegally goes to war. In arriving at this decision the Council must be unanimous except for the parties to the dispute; each member has therefore a veto. At present, however, the United States lacks such a veto, although the imposition of a League blockade may be fully as harmful to American interests as to the interests of League members. One of the many advantages put forward in support of a system of consultation is that it would give the United States the same veto over a League blockade that Great Britain or other members now enjoy. If the United States and members of the Council agreed as to which State was the aggressor, the United States would not necessarily be obliged to aid in the enforcement of a League blockade; but it would be expected not to insist upon the right of its nationals to trade with the aggressor. In case the United States disagreed with other States as to the aggressor, a League blockade would not be imposed, or a blockade would be applied to both parties.

In a sense, the imposition of an arms embargo upon one or both belligerents by the United States, as proposed in the above resolutions, would resemble the economic blockade by League members. The difference between the two systems would be first, that, from the legal standpoint, the United States would act in complete independence of the League in determining to what States an embargo should be applied.[101] Moreover, whereas the Covenant obligates League members to impose an actual blockade against an aggressor State covering all kinds of goods, the Burton or Porter resolution would obligate the United States merely to prevent arms shipments from its territory to belligerent States.

98. Joint Resolution of January 31, 1922, 42 Stat. 361; Joint Resolution of March 14, 1912, 37 Stat. 630. (Under this resolution the President imposed an arms embargo upon Santo Domingo in October 1905; on Mexico in 1912, 1915, 1919 and 1924; on Honduras in March 1924; on Cuba in May 1924; on China in March 1922; and on Nicaragua in September 1926.)

99. In a latter resolution, introduced October 17, 1929 (H. J. Res. 122, 71st Congress, 1st Session), Congressman Porter omitted the phrase "except under such limitations and exceptions as the President prescribes," a phrase found also in the resolution of 1912. This omission would require the President to impose an embargo upon both belligerents, and upon governments as well as revolutionaries, without distinction. Omission of the qualifying clause would mark such a drastic change from present American policy of supporting constitutional governments that it is doubtful whether it would be enacted.

100. Instead of Congressional action of the type above described, the proposal has been made that the President simply make a pronouncement to the effect that the United States will not insist upon the right to trade with an aggressor. (R. L. Buell, "Sea Law and the Kellogg Pact," *New Republic*, May 15, 1929.) Such procedure might lead to the establishment of a new "Monroe Doctrine" and solve the problems of the relationship of the United States to League sanctions, without the necessity of undergoing a Congressional debate. The problem of deciding what State was the aggressor would be determined by means of the consultative machinery already described.

101. Undoubtedly, however, the President of the United States would consult with the League Council in case of actual outbreak of war. Cf. p. 183.